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13

14 IN THE UNITED STATES DISTRICT COURT
15
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 ROBERT EVERSOLE,
21 ANGEL LOPEZ,
22 GEOFFREY GUESS,
23 ROCHELEM ERIC AQUINO YADAO,
24 EMARIE ORNELAS,
25 REGINA BROOMALL,

Defendants.

CASE NO. 1:20-CR-00241-DAD-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: December 8, 2021

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

This case is set for status conference on December 8, 2021. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency, were entered to address public health concerns related to COVID-19.

Although the General Orders and declarations of emergency address the district-wide health

¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
 2 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record
 3 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
 4 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
 5 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 6 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
 7 findings on the record "either orally or in writing").

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 9 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
 10 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
 11 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 12 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
 13 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
 14 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 15 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

16 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
 17 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
 18 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 19 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 20 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d
 21 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
 22 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
 23 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
 24 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
 25 by the statutory rules.

26 In light of the societal context created by the foregoing, this Court should consider the following
 27 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 28

1 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date
2 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
3 pretrial continuance must be “specifically limited in time”).

4 **STIPULATION**

5 Plaintiff United States of America, by and through its counsel of record, and defendants, by and
6 through defendants’ counsel of record, hereby stipulate as follows:

- 7 1. By previous order, this matter was set for status on December 8, 2021.
8 2. By this stipulation, defendants now move to continue the status conference until March
9 23, 2022, and to exclude time between December 8, 2021, and March 23, 2022, under 18 U.S.C.
10 § 3161(h)(7)(A), B(iv) [Local Code T4].

- 11 3. The parties agree and stipulate, and request that the Court find the following:

12 a) The government has represented that the discovery associated with this case
13 includes reports, photographs, and audio files and is voluminous. This discovery has been either
14 produced directly to counsel and/or made available for inspection and copying, and the
15 production of or availability of more discovery is anticipated.

16 b) Counsel for defendants desire additional time to further review discovery, discuss
17 potential resolution with defendants and the government, and investigate and prepare for trial.

18 c) Counsel for defendants believe that failure to grant the above-requested
19 continuance would deny him/her the reasonable time necessary for effective preparation, taking
20 into account the exercise of due diligence.

21 d) The government does not object to the continuance.

22 e) Based on the above-stated findings, the ends of justice served by continuing the
23 case as requested outweigh the interest of the public and the defendant in a trial within the
24 original date prescribed by the Speedy Trial Act.

25 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
26 et seq., within which trial must commence, the time period of December 8, 2021 to March 23,

27 _____
28 ² The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
2 T4] because it results from a continuance granted by the Court at defendant's request on the basis
3 of the Court's finding that the ends of justice served by taking such action outweigh the best
4 interest of the public and the defendant in a speedy trial.

5 g) The parties also agree that this continuance is necessary for several reasons,
6 including but not limited to, the need to permit time for the parties to exchange supplemental
7 discovery, engage in plea negotiations, and for the defense to continue its investigation and
8 preparation, pursuant to 18 U.S.C. § 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv).

9 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
10 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
11 must commence.

12 IT IS SO STIPULATED.

13 Dated: November 29, 2021

PHILLIP A. TALBERT
Acting United States Attorney

15 _____
16 /s/ STEPHANIE M. STOKMAN
17 STEPHANIE M. STOKMAN
Assistant United States Attorney

18 Dated: November 29, 2021

19 _____
20 /s/ PETER JONES
21 PETER JONES
Counsel for Defendant
ROBERT EVERSOLE

22 Dated: November 29, 2021

23 _____
24 /s/ VIRNA SANTOS
25 VIRNA SANTOS
Counsel for Defendant
ANGEL LOPEZ

1 Dated: November 29, 2021

/s/ JOHN MEYER

JOHN MEYER

Counsel for Defendant

GEOFFREY GUESS

4 Dated: November 29, 2021

/s/ MELISSA BALOIAN

MELISSA BALOIAN

Counsel for Defendant

ROCHLEM ERIC AQUINO

YADAO

7 Dated: November 29, 2021

/s/ KEVIN ROONEY

KEVIN ROONEY

Counsel for Defendant

EMARIE ORNELAS

11 Dated: November 29, 2021

/s/ MIKE MCKNEELY

MIKE MCKNEELY

Counsel for Defendant

REGINA BROOMALL

15 **ORDER**

16 IT IS SO ORDERED that the status conference is continued from December 8, 2021, to **March**
17 **23, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to
18 U.S.C. § 3161(h)(7)(A), B(iv).

20 IT IS SO ORDERED.

21 Dated: December 3, 2021

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE